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No. 470

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

SHAFFER TRANSPORTATION COMPANY, and AMERICAN TRUCKING ASSOCIATIONS, INC.,
Appellants,

v.

UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION,
Appellees.

On Appeal From The United States District Court For The District of South Dakota, Northern Division.

MOTION OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE FOR LEAVE TO FILE BRIEF AS AN AMICUS CURIAE

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Of Counsel.

January, 1957.

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Now come John S. Burchmore and Robert N. Burchmore, as counsel for The National Industrial Traffic League, pursuant to paragraph 3 of Rule 42, and move the Court for leave to file a brief as *amicus curiae*.

The League is a nationwide organization of shippers via all forms of transportation, including railroads, motor carriers, water carriers, and air carriers, as well as freight

forwarders. The organization is dedicated to the promotion of sound, economic transportation, and its membership generally has a vital interest in the principles and policies of regulation of transportation pursuant to the National Transportation Policy and in the public interest.

The League, on behalf of its membership, as representative of the shipping public, has an interest in the granting of operating rights for highway transportation sufficient to meet the public need for such transportation. Consequently, the League is concerned with the interpretation by the Interstate Commerce Commission and the Courts of those provisions of the Interstate Commerce Act relating to such operating rights.

The Court has noted probable jurisdiction in two appeals that present questions in the determination of which the League believes that the public interest and need are legally significant.

No. 419, *Shaffer Transportation Company, et al.,* v. *United States of America,* presents the question whether the public is entitled to both railroad and motor carrier transportation upon request, or whether in the absence of existing motor carrier service the issuance of operating authority for a proposed motor carrier service may be withheld until the inadequacy of existing railroad service is proven.

In this case, the Commission denied the application for operating rights and the court below dismissed the suit of the applicant motor carrier to set aside the Commission's order. 139 F. Supp. 444. The League requests leave to file a brief as *amicus curiae* in support of appellants, urging particularly the right of the public under the statute to have both railroad and motor carrier modes of transportation authorized.

No. 101, *American Trucking Associations, Inc., et al.*, v. *United States of America, et al.* (Also No. 110, *Railway Labor Executives Association, et al.*, v. *United States of America, et al.*) presents the question whether a grant of new or additional motor carrier operating authority to a carrier that is a subsidiary of a railroad must, as a matter of law, be restricted to service that is auxiliary and supplemental to rail service, regardless of the public need for unrestricted service by such subsidiary.

In this case, the Commission issued an unrestricted certificate to the railroad subsidiary and the court below dismissed the actions of motor carriers and their organizations (and of the railway labor organization) to set aside the Commission's order. The League seeks leave to file a brief as *amicus curiae* in support of the appellees, arguing particularly that the public need for highway transportation should be the paramount consideration in the determination as to what, if any, restrictions should be placed upon highway service by railroad subsidiaries.

Opposing parties refuse consent

Upon application to the parties for consent as a preliminary to this motion, the Interstate Commerce Commission granted written consent to the League in both cases, notwithstanding that the interest of the League is in support of the Commission in No. 101, and opposed to it in No. 419. Further, written consent was granted in each case by the parties in whose support the League brief would be filed. However, in No. 419, the railroads refuse consent and in No. 101 the American Trucking Associations refuse consent.

Necessity for adequate presentation of the public interest

Except for the United States and Interstate Commerce Commission the parties to these proceedings clearly have an interest in preserving for themselves so far as they can the exclusive opportunity to provide transportation service, whether by railroad or by highway. Neither the railroad interests, on the one hand, nor the motor carriers and their associations, on the other, have any selfish interest in an adequate presentation of the question as to how the statutory provisions must be interpreted in the light of the public interest and need. Broadly speaking, the Interstate Commerce Commission is charged with the duties of regulation in the public interest according to the National Transportation Policy. And the Commission consents to the filing of League briefs in both cases, indicating the belief that an adequate presentation is made more likely by such filing.

The United States also has given its consent in writing to the requested filing.

Wherefore, counsel for The National Industrial Traffic League respectfully urge that leave be granted for the filing of a brief as *amicus curiae*.

Respectfully submitted,

JOHN S. BURCHMORE,
ROBERT N. BURCHMORE,

January, 1957.

Certificate of Service

I, Robert N. Burchmore, attorney for The National Industrial Traffic League, and member of the Bar of the Supreme Court of the United States, hereby certify that on the 31st day of January, 1957, I served copies of the foregoing document upon the several parties thereto, as follows:

1. Upon the United States by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid, to the Solicitor General, Department of Justice, Washington, 25, D. C.

2. On the Interstate Commerce Commission by mailing a copy in a duly addressed envelope with postage prepaid to Robert W. Ginnane, General Counsel, Interstate Commerce Commission, Washington 25, D. C.

3. On the intervening railroads, by mailing copies in duly addressed envelopes with air mail postage prepaid to F. F. Chapman, Security Bank Bldg., Sioux Falls, South Dakota; and Amos M. Mathews, 280 Union Station Bldg., Chicago 6, Ill.

4. Upon appellants, by mailing copies in duly addressed envelopes with air mail postage prepaid to R. G. May, Security Bank Bldg., Sioux Falls, South Dakota; Donald A. Morken, 1100 First National-Soo Line Bldg., Minneapolis 2, Minn.; and Peter T. Beardsley and Fritz R. Kahn, 1424 Sixteenth St., N.W., Washington 6, D. C.

ROBERT N. BURCHMORE